ROBERT N. ENFIELD

IBLA 78-400 Decided August 31, 1978

Appeal from decisions of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offers. NM-A 32527 and NM-A 32607.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Lands Subject to

   A noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer is in an expired or terminated lease and has not been posted as available, as prescribed by 43 CFR Subpart 3112.

2. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Generally

   An oil and gas lease offer for acquired lands will be rejected unless all the copies of the application required by the regulation, 43 CFR 3111.1-2, are filed.

3. Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Applications: Generally

   Where an oil and gas lease offer for acquired lands is filed for less than the entire tract acquired by the United States, the regulations in 43 CFR 3102.2-3(b)(1) require that the application must describe the land by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land.

APPEARANCES: Robert N. Enfield, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Robert N. Enfield has appealed from decisions of the New Mexico State Office, Bureau of Land Management (BLM), dated April 11 and April 12, 1978, which rejected his noncompetitive oil and gas lease offers NM-A 32527 and NM-A 32607.

Appellant filed his over-the-counter lease offer NM-A 32527 April 19, 1978, for a 10.71-acre tract of land in the W 1/2 SE 1/4 of sec. 7, 19 S., R. 27 E., New Mexico principal meridian. This land had formerly been included in expired oil and gas leases BLM-A-034852 and BLM-A-034852A. BLM noted in its rejection that the lands were not subject to filing because they had not been posted on the notice of lands available for filing. Additionally, appellant had filed only six (6) copies of his offer to lease.

[1] The acceptability of appellant's offer under the circumstances at the point in time when it was filed is governed by the provisions of the 43 CFR 3112. This section provides, among other things, that land formerly under oil and gas lease must be posted under the simultaneous filings procedures and only if no simultaneous filings are received does the land become available to over-the-counter filings. We have repeatedly emphasized that a noncompetitive oil and gas lease offer is properly rejected where the land which is the subject of such offer has not yet been posted as available as prescribed by 43 CFR subpart 3112. David A. Provinse, 33 IBLA 312 (1978); Vern H. Bolinder, 22 IBLA 130 (1975); Jack E. Griffin, 7 IBLA 155 (1972). Appellant's contention that the previous leases were void because the United States did not own a portion of the land included therein, even if true, does not alter this requirement.

Therefore, the lands embraced in this offer were not subject to leasing at the time of appellant's over-the-counter application, and the State Office rejection was mandatory.

[2] Moreover, 43 CFR 3111.1-2 requires an applicant to file seven copies of an acquired lands lease application. In the instant case appellant filed only six copies. 1/ Having failed to comply with the pertinent regulation his application must be rejected for that reason alone. Duncan Miller, 21 IBLA 50 (1975); Duncan Miller, 10 IBLA 208 (1973).

1/ After the date of the BLM decision appellant filed an additional seven copies.

[3] Oil and Gas lease offer NM-A 32607 was filed for 1.127 acres of land within the Carlsbad Project within sec. 13, T. 19 S., R. 26 E., New Mexico principal meridian. The offer was rejected because (1) the lands applied for constitute less than the entire tract acquired by the United States and the lands were not sufficiently described by courses and distances between successive angle points on its boundary tying by course and distance into the description in the deed or other document by which the United States acquired title to the land as required by 43 CFR 3101.2-3(b)(1) and (2) it is not in the public interest to lease such a small acreage in the middle of two existing leases. 2/

In addition, by amendment of the decision on April 26, 1978, the State Office pointed out that on the original lease offer from appellant failed to complete item 6, the "sole party in interest" statement. 3/ 43 CFR 3102.7. These reasons assigned for rejection are correct. Appellant does not offer any basis for reversal of the State Office decision. Instead, he merely indicates that if these facts are so, any previous leases were invalid for the same reasons and should not have been in force or in effect. The validity of any previous leases has no bearing on the acceptability of appellant's current lease offer NM-A 32607. That offer must be tested on its own merits and it clearly did not comply with the pertinent regulatory requirements.

Therefore, pursuant to the authority delegated by the Secretary to the Board of Land Appeals, 43 CFR 4.1, the decision below is affirmed as modified.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

James L. Burski
Administrative Judge

2/ The decision failed to give any reason for its holding that the issuance of the lease would not be in the public interest, but this conclusion is not disputed on appeal.

3/ Oddly, the original typed copy of the offer omits the sole party in interest declaration, but another original and five carbon copies are appropriately marked.